



# **Ealing Council**

## **The construction and erection of two modular built houses**

at

**117 Mansell Road,  
Greenford**

**Part C – Form of Contract and  
contract amendments**

The form of Contract for the project will be the JCT Design and Build Contract, 2011 version. The following amendments, deletions, substitutions and additions will be made to the contract before execution.

### **JCT DESIGN AND BUILD CONTRACT**

- The contract: JCT Design and Build Contract (DB), 2011 Edition,
- Requirement: Allow for the obligations, liabilities and services described therein against the following headings:

### **THE RECITALS**

#### First - THE WORKS

- Comprise: the construction, using off-site modular construction, of two semi-detached 3 bedroom houses

#### Fifth - DIVISION OF THE WORKS INTO SECTIONS

- The Fifth Recital will be deleted.

### **THE ARTICLES**

#### 3 - EMPLOYER'S AGENT

- Employer's Agent: Robert Turner MRICS of RJ Turner Associates

#### 5 - CDM COORDINATOR

Amend title of Article 5 to "Article 5: Principal Designer"

Delete Article 5 and replace with;

"The Principal Designer for the purposes of the CDM Regulations is George Allen FRICS of Allen Construction Consultancy or such replacement as the Employer at any time appoints to fulfil that role"

#### 6 – PRINCIPAL CONTRACTOR

Delete "and the SWMP Regulations"

Delete "or, if he ceases to be the Principal Contractor, such other contractor as the Employer shall appoint pursuant to regulation 14(3) of the CDM Regulations and/or regulation 4 of the SWMP Regulations" and replace with "or such replacement as the Employer at any time appoints to fulfil that role"

- Principal Contractor: The Contractor

#### Footnote 5:

Delete the existing text and replace with:

"Insert the name of the Principal Designer in Article 5 if the Contractor is not to fulfil that roles and that of the Principal Contractor in Article 6 if that is to be a person other than the Contractor.

Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors"

### **NEW ARTICLE 10: COLLATERAL WARRANTY/IES**

Insert new Article 10:

"The Contractor shall procure a Deed or Deeds of Collateral Warranty in the forms set out at appendix 1 from itself, any consultant or any sub-contractor with design responsibility, in favour of

the Employer and/or in favour of any beneficiary (as required and as appropriate) as soon as practicable following request by the Employer but in any event within one month of signature of the sub-contract”

## **CONTRACT PARTICULARS**

### **PART 1: GENERAL**

Fourth recital and clause 4.5 - CONSTRUCTION INDUSTRY SCHEME (CIS)

- Employer at the Base Date is a 'contractor' for the purposes of the CIS.

Fifth Recital – DESCRIPTION OF SECTIONS

Does not apply

Sixth Recital - FRAMEWORK AGREEMENT

Does not apply

Seventh Recital and Part 1 of Schedule 2 - SUPPLEMENTAL PROVISIONS - PART 1

- Site manager: Paragraph 1 does not apply
- Named subcontractors: Paragraph 2 does not apply
- Bills of quantities: Paragraph 3 does not apply
- Valuation of changes - Contractor's estimate: Paragraph 4 applies
- Loss and expense - Contractor's estimates: Paragraph 5 applies

Seventh Recital and Part 2 of Schedule 2 - SUPPLEMENTAL PROVISIONS - PART 2

- Acceleration quotation: Paragraph 6 does not apply
  - Collaborative working: Paragraph 7 applies
  - Health and safety: Paragraph 8 applies
  - Cost savings and value improvements: Paragraph 9 applies
  - Sustainable developments and environmental considerations: Paragraph 10 applies
  - Performance indicators and monitoring: Paragraph 11 does not apply
  - Notification and negotiation of disputes: Paragraph 12 applies
- Employers nominee:  
Contractors nominee:

Article 4 - EMPLOYER'S REQUIREMENTS, CONTRACTOR'S PROPOSALS, CONTRACT SUM ANALYSIS

- Employer's Requirements:
- Contractor's Proposals: To be completed by the Contractor.
- Contract Sum Analysis: To be completed by the Contractor.

Article 8 - ARBITRATION

- Article 8 and clauses 9.3 to 9.8 (arbitration) apply

Clause 1.1 - BASE DATE

- Base Date: to be agreed

Clause 1.1 - CDM PLANNING PERIOD

Delete whole reference to CDM Planning Period and footnote 10

Clause 1.1 - DATE FOR COMPLETION OF THE WORKS

- Date for completion of the Works: to be agreed

#### CLAUSE 1.7 - ADDRESSES FOR SERVICE OF NOTICES

- Employer:
  - Address: Perceval House 4/SE/2, 14-16 Uxbridge Road London W5 2HL
- Contractor: [to be entered]

#### Clause 2.3 - DATE OF POSSESSION OF THE SITE

- *Date of Possession of the site: to be agreed*

#### Clause 2.4 - DEFERMENT OF POSSESSION OF THE SITE

- Clause 2.4 Where clause 2.4 applies, maximum period of deferment is 6 weeks.

#### Clause 2.17.3 - LIMIT OF CONTRACTOR'S LIABILITY FOR LOSS OF USE, ETC.

Clause 2.17.3 does not apply

#### Clause 2.29.2 - LIQUIDATED DAMAGES

- Damages: At the rate of £440 per week

#### Clause 2.34 – SECTIONS: Section Sums

Not applicable

#### Clause 2.35 - RECTIFICATION PERIOD

- Period: 12 months from the date of practical completion of the Works.

#### Clause 4.6 - ADVANCE PAYMENT AND ADVANCE PAYMENT BOND

- Advance payment: Clause 4.6 does not apply
- Advance Payment Bond: Clause 4.6 is not required

#### CLAUSE 4.7 - METHOD OF PAYMENT – ALTERNATIVES

- Payment: periodically in accordance with Alternative B (clause 4.14).
- Alternative B: Periodic Payments – Dates of Interim Applications: The first date is one month after the Date of Possession and thereafter the same date in each month or the nearest Business Day in that month

#### Clause 4.15.4 - LISTED ITEMS - UNIQUELY IDENTIFIED

- Listed items: Clause 4.15.4 will be deleted.

#### Clause 4.15.5 - LISTED ITEMS - NOT UNIQUELY IDENTIFIED

- Listed items: Clause 4.15.5 will be deleted.

#### Clause 4.17 - CONTRACTOR'S RETENTION BOND

- Clause 4.17 does not apply.

#### Clause 4.18.1 - RETENTION PERCENTAGE

- Retention: five per cent.

#### CLAUSE 4.19 AND SCHEDULE 7 - FLUCTUATIONS OPTIONS

- Schedule 7: Fluctuations Option A applies

Percentage addition for fluctuations Options A - 15 per cent

Clause 5.5 - DAYWORK

- Does not apply

Clause 6.4.1.2 - CONTRACTOR'S INSURANCE - INJURY TO PERSONS OR PROPERTY

- Insurance cover (for any one occurrence or series of occurrences arising out of one event): £5 millions.

Clause 6.5.1 - INSURANCE - LIABILITY OF EMPLOYER

- Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event: £2 millions.

Clause 6.7 and Schedule 3 - INSURANCE OF THE WORKS - INSURANCE OPTIONS

- Schedule 3: Insurance option A applies
- Percentage to cover professional fees: 15
- Annual renewal date of insurance: [to be supplied by the contractor]

Clause 6.10 and Schedule 3 - TERRORISM COVER

*Unless otherwise stated, Pool Re Cover is required*

Clause 6.12 - PROFESSIONAL INDEMNITY INSURANCE

- Level of cover: Amount of indemnity required: £ 0.5 Millions
  - relates to claims or series of claims arising out of one event
- Sub limits within the overall level of cover:
  - Cover for pollution and contamination claims: is not required
- Expiry of required period of Professional Indemnity Insurance: 12 years.

Clause 6.14 - JOINT FIRE CODE

- The Joint Fire Code: does not apply
- Application: State whether the insurer under Schedule 3, Insurance Option A, B or C (paragraph C.2) has specified that the works are a 'Large Project': Not applicable.

Clause 6.17 - JOINT FIRE CODE - AMENDMENTS/ REVISIONS

- Joint Fire Code - Amendments/ revisions: The cost, if any, of compliance with amendments or revisions to the Joint Fire Code shall be borne by Not applicable

Clause 7.2 - ASSIGNMENT/ GRANT BY EMPLOYER OF RIGHTS UNDER CLAUSE 7.2

- Clause 7.2 does not apply

Clause 8.9.2 - PERIOD OF SUSPENSION (TERMINATION BY CONTRACTOR)

- Period of suspension: 3 months

Clauses 8.11.1.1 to 8.11.1.6 - PERIOD OF SUSPENSION (TERMINATION BY EITHER PARTY)

- Period of suspension: 3 months

Clause 9.2.1 - ADJUDICATION

- The Adjudicator is: To be appointed by nominating body.
- Nominating body: Royal Institution of Chartered Surveyors

#### Clause 9.4.1 - ARBITRATION

- Appointor of Arbitrator (and of any replacement): President or a Vice President of the Royal Institution of Chartered Surveyors.

## **PART 2: THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES**

Class or person: - tenants, first purchases & lessees

Part of the works: any part

Clause: 7C (collateral warrantees)

## **THE CONDITIONS**

### **SECTION 1: DEFINITIONS AND INTERPRETATION**

#### 1.1 - DEFINITIONS

Insert the following before the definition of Completion Date:

Delete the definition of Interest Rate and replace with the following:

"a rate in compliance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2002 and the Late Payment of Commercial Debts Regulations 2013"

Amend the following definitions:

"Agreement" add to the end of the definition, before the full stop " , each as amended by the preliminaries"

"Article" add to the end of the definition, before the full stop " , as amended by the preliminaries"

"CDM Co-ordinator" delete definition

"CDM Planning Period" delete definition

"CDM Regulations" delete "2007" and replace with "2015"

"Conditions" add to the end of the definition, before the full stop " , each as amended by the preliminaries

"Construction Phase Plan" delete the existing text and replace with "the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions"

"Contract Particulars" add to the end of the definition, before the full stop " , all as amended (if applicable) by the preliminaries"

"SWMP Regulations" delete definition

Insert the following new definitions:

"Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC)

"Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément or having been supplied or placed on the market in breach of the Construction Products Regulations"

"Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works)."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement building information modelling and repair of the Works (and the completed Works)."

"Principal Designer: the Contractor or other person named in Article 5 or any successor appointed by the Employer"

"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works."

In clause 1.3, after the wording "override or modify" add the following "the preliminaries,"

#### Clause 1.8.4

Add the following wording to the end of the clause:

"If neither party commences arbitration or legal proceedings within this period the parties agree that the Adjudicator's decision shall be conclusive on the matters with which it deals and finally binding on them"

Insert Additional clause 1.11

#### "Liability Period

Neither party shall commence any action or proceedings against the other under this contract after 12 years from the date of practical completion of the Works and any adjudicators decision under clause 9.2, other than a decision that has already become finally binding under clause 1.8, shall be finally binding on them, unless either party has referred that dispute for final determination by arbitration or legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date"

## **SECTION 2: CARRYING OUT THE WORKS**

#### Clause 2.1.1

After the wording "Construction Phase Plan" delete "other"

Insert Additional clause 2.1.5

#### Confidentiality

The Contractor shall be aware of and make it known to all employees agents or sub-contractors that all information in this Contract, or acquired in any way as a result of the performance or carrying out of the Contract is confidential to the Employer. The Contractor or the Contractor's employees or agents or sub-contractors shall not divulge any such information to any other person, other than for the purposes of the performance or carrying out of the Contract except with the written permission of the Employer. The Contractor shall neither dispose nor part with possession of any confidential information or material provided to the Contractor pursuant to this Contract or prepared by the Contractor pursuant to this Contract other than in accordance with the express written instructions of the Employer. The Contractor shall indemnify and keep

indemnified the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this clause.

Insert Additional clause 2.1.6

The Contractor hereby agrees that if the Contractor its employees officers sub-contractors or agents gain access in the course of the performance of this Contract or other to information held by the Employer and consisting of personal data within the meaning of Section 1 of the Data Protection Act 1998 such information shall remain confidential and shall not be disclosed to any other person for any reason whatsoever without the express authority of the Employer and the Contractor hereby further agrees and undertakes to indemnify the Employer from all actions arising from any such unauthorised disclosure.

Insert Additional clause 2.1.7

"In performing his obligations under this Contract, the Contractor shall and shall ensure that each of its sub-contractors shall comply with the Modern Slavery Act 2015"

Clause 2.2.1, after the wording "so far as procurable, be" add "of satisfactory quality and"

Add new sub-clause 2.2.6:

"The Contractor shall not specify or use any products or materials in the Works, which, at the time of specification or use, are Deleterious"

Add new sub-clause 2.2.7:

"Without prejudice to clause 2.2.6, the Contractor shall not knowingly suffer or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious. The Contractor shall immediately notify the Employer if he becomes aware of any such use"

Clause 2.7.1

Delete "The" at the commencement of the clause and insert "Unless the Employer has supplied the Contractor with one original executed and completed part of this agreement (incorporating all schedules, appendices and Contract Documents), the"

Clause 2.7.2

After the wording "provide him with" insert "one original executed and completed part of this agreement (incorporating all schedules, appendices and Contract Documents) or"

After the wording "of the Contract Documents" insert "in either case (unless previously provided),"

Delete the wording "for the purposes of regulation 10" and replace with "to be provided by the Contractor under regulation 4"

Clause 2.7.4.2

After the wording "save that the Employer may" insert "use any documents supplied by the Contractor in accordance with clause 2.38 and"

Insert at the end of clause 2.7.5

.5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ('FOIA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.7.4 or any other term of this Contract:

.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, to the general public in whatever form the Employer decides, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;

.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'



#### Clause 2.14

Delete the existing wording and replace with:

"Where there is a discrepancy within the Employer's Requirements or the Contractor's Proposal's (including any non-compliance with the Statutory Requirements and including a discrepancy that results from a Change under clause 3.9), or a divergence between the Employer's Requirements and the Contractor's Proposals (including a divergence that results from a Change under clause 3.9), the Contractor shall notify the Employer of the discrepancy or divergence and of its proposed amendments to correct or remove it (as the case may be). Subject always to compliance with the Statutory Requirements, the Employer shall decide between the discrepant or divergent items (as the case may be) or otherwise may accept the Contractor's proposed amendments or decide how the discrepancy or divergence shall be dealt with. The Contractor shall be obliged to comply with the decision or acceptance by the Employer without any adjustment of the Contract Sum or extension of time for completion and without affecting in any way or to any degree the responsibility of the Contractor under this Contract."

#### Clause 2.15

After the wording "Change in Statutory Requirements" insert "that was not foreseen by the Contractor at the Base Date and could not reasonably have been foreseen by a competent contractor at the Base Date"

#### Clause 2.17

Delete clause 2.17 and its heading, and replace with a new heading:

#### **"Design Work - liabilities"**

Insert new sub-clause 2.17.1:

"Without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the Works including all design work proposed by or on behalf of the Employer on or before the date of this Contract forming part of the Employer's Requirements."

Insert new sub-clause 2.17.2:

"Without prejudice to clause 2.17.1, the Contractor shall be fully responsible in all respects for any design work carried out by a Professional Consultant or specialist designer or sub-contractor that the Contractor has or will employ (including a person employed at the Employer's request), whether such design work is carried out before, on or after the date of this Contract."

Insert new sub-clause 2.17.3:

"Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when:

.1 designing the Works; and

.2 selecting goods, materials, plant and equipment for incorporation in the Works."

Insert new sub-clause 2.17.4:

"Without prejudice to clauses 2.1.1 and 2.17.3, the Contractor warrants that its design complies with Statutory Requirements."

#### Clause 2.24.1

Insert the following wording at the end of the clause "such notice to be given in a period no longer than 28 days after the delay becoming apparent. If the Contractor fails to give notice of a claim within such period of 28 days, the time for completion shall not be extended and the Employer shall be discharged from all liability in connection with the claim."

## Clause 2.25

Delete "and" from the end of sub-clause 2.25.6.3.

Delete the full stop at the end of sub-clause 2.25.6.4 and replace with:  
"; and"

Add a new sub-clause 2.25.6.5:

"(save where the Relevant Event is as defined in clause 2.26.9 and provided, in that case, that the Contractor has complied fully with any obligation upon it to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

## Clause 2.26.2.1

After the wording "Clause 2.13" insert "(subject always to clause 2.14)"

## Clause 2.26.7

Insert the following at the end of the clause "provided that the Contractor has given reasonable notice to the Statutory Undertaker of the dates on which the work the Statutory Undertaker is to undertake is required to commence and be completed and has used all reasonable endeavours to secure the agreement of the Statutory Undertaker to such dates"

## Clause 2.26.11

Insert the following at the end of the clause "provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor"

## Clause 2.27

Delete "3.16.5" and insert "3.16 in respect of the supply of documents and information"

## Clause 2.32

Insert the following at the end of the clause ", provided that the Employer shall not be required to issue that notice earlier than the expiry of the Rectification Period for the Relevant Part"

## Clause 2.36

Insert the following at the end of the first sentence of this clause ", provided that the Employer shall not be required to issue any Notice of Completion of Making Good earlier than the expiry of the Rectification Period"

## Clause 2.37

Delete the existing text and replace with:

"The Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as may be specified in the Contract Documents or as the Employer may reasonably require that show or describe the Works as build or relate to the maintenance and operation of them or their installations"

## Clause 2.38.2

Delete the existing clause and replace with the following:

".1 The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of Contractor for any purpose relating to the Works (and the completed Works) including any of the Permitted Uses.

.2 This licence allows the Employer to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

.3 This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent."

#### Clause 2.38.3

Delete the existing clause and replace with the following:

"The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided."

### **SECTION 3: CONTROL OF THE WORKS**

Insert new clause 3.3.4

"In the event that the Contractor enters into any sub-contract in connection with this Contract it shall:

3.3.4.1 provide the Employer with the following information in respect of its immediate sub-contractors involved in the provision of the Works where the Works are being performed at the Employer's premises:

- a) name of sub-contractor
- b) sub-contractor contact details
- c) details of sub-contractor legal representatives

3.3.4.2 provide the information listed in 3.3.4.1 above no later than the Date of Possession of the Site;

3.3.4.3 provide the Employer with any changes to the information listed in 3.3.4.1 above as soon as it becomes aware of such change; and

3.3.4.4 provide the Employer with the information listed in 3.3.4.1 above for any sub-contractors appointed after the Date of Possession of the Site, such information to be provided no later than 5 Business Days after such appointment.

The Employer reserves the right to extend the obligations listed in 3.3.4.1 to 3.3.4.4 above beyond the immediate sub-contractors and in the event of a decision to exercise this right shall provide notification to the Contractor"

Insert new clause 3.3.5

"Where the Employer considers there are grounds for the exclusion of a sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- a) if the Employer finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the sub-contractor;
- b) if the Employer finds there are non-compulsory grounds for exclusion, the Employer may require the Contractor to replace or not appoint the sub-contractor and the Contractor shall comply with such a requirement."

#### Clause 3.4

After the wording "Design and Build Sub-Contract" insert "The Contractor shall notify the Employer and the Employer's Agent if it appoints a sub-contractor using a different form of sub-contract and shall, on request, provide a full copy of that different form of sub-contract to the Employer or the Employer's Agent."

#### Clause 3.4.2.3

Delete the existing text and replace with:

"that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations"

#### Clause 3.4.2.5

delete "14 days" and replace with "10 Business Days"

Insert new clause 3.4.2.7:

"The Contractor shall include in every sub-contract:

- a) the right for the Contractor to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law, and
- b) a requirement that the sub-contractor includes a provision having the same effect as a) above in any sub-contract with it awards.

In this sub-clause 'sub-contract' means a contract between two or more contractors, at any stage or remoteness from the Employer in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any party of this Contract."

#### Clause 3.9.4

After the wording "notify the Employer whether" delete ", pursuant to his obligations under regulation 20 (if he is the CDM Co-ordinator) or regulation 22 of the CDM Regulations," and replace with "in his capacity as Principal Designer and/or Principal Contractor"

#### Clause 3.16

Amend the heading by deleting the wording "Undertakings to comply"

Delete the existing text of the clause and replace with:

"Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular but without limitation:

.1 where the Contractor is not the Principal Designer, the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;

.2 where the Contractor is and while he remains the Principal Designer, he shall comply with the duties of a Principal Designer and shall without charge prepare, and deliver to the Employer, the health and safety file;

.3 the Contractor shall comply with regulations 8 to 10 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[41]</sup>

.4 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

.5 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee;

.6 where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before practical completion of the Works, the

Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations [without charge/and the Contractor's work in that regard shall be treated as a Change under clause 5.1]"

Footnote 41:

Delete the existing text and replace with:

"where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8"

Clause 3.17

Delete the clause heading, number and text

## **SECTION 4: PAYMENT**

Clause 4.7.1

Delete the existing text and insert the following:

'During the period up to the due date for the final payment under clause 4.12.5, the due dates for Interim Payments shall be the monthly dates specified in the Contract Particulars'

Clause 4.7.2

After the wording 'under clause 4.13 where' insert 'the Contract Particulars state that'

Clause 4.8.1

Insert the following at the end of the clause 'and shall be accompanied by such further information as may be specified in the Employer's Requirements'

Clause 4.9.1

Change '14 days' to '35 days'

After 'from its due date' insert, 'subject to clause 4.8.2'

Clause 4.9.4

Change '5 days' to '7 days' in the second line

Clause 4.10.1

Delete the existing text of the entire clause and insert the following:

'Each Payment Notice under this Contract shall only be served by the Employer and shall specify the sum that the Employer considers to be or have been due at the due date in respect of the relevant payment and the basis on which that sum has been calculated.'

Clause 4.10.5

Delete the wording "Notwithstanding his fiduciary interest in the Retention as stated in clause 4.16, the" and insert "The"

Clause 4.11.1

Change '7 days' in the fourth line to '14 days'

After the wording "Contractor has given notice to the Employer of his intention to suspend the performance of" insert "any or all of"

#### Clause 4.11.3

Delete the wording "or on request"

At the end of the clause insert the following new sentence "The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer"

#### Clause 4.12.8

Change '5 days' to '7 days' in the second line

#### New Clause 4.12A

Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Works, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 calendar days from the receipt of a valid invoice, as defined by the sub-contract requirements. Each sub-contractor shall also cause a similar term to be included in such sub-sub-contract.

#### Clause 4.16

Delete clause 4.16 and replace with:

"With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.7.2.1, the Employer shall be:

- .1 under no fiduciary obligation to the Contractor or any third party;
- .2 under no obligation to set aside in a separate bank account any amount representing the Retention; and
- .3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest."

#### Clause 4.20

##### Clause 4.20.1

After the following wording on the second line "...apparent to him" insert "such notice to be given in a period no longer than 28 days after becoming apparent.

Change the full stop at the end of sub-clause 4.20.2 to a semicolon and add new sub-clauses 4.20.3 and 4.20.4 as below:

"3 If the Contractor fails to give notice of a claim within such period of 28 days, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim"

"4 not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable) in respect of any cost or loss and/or expense arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons"

## **SECTION 5: CHANGES**

Add the following wording to the end of clause 5.6 "provided always that the substantial change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons"

## **SECTION 6: INJURY, DAMAGE AND INSURANCE**

### **Clause 6.1**

After the wording "caused by the carrying out of the Works" insert "or of any other obligation pursuant to Section 2 or Section 3 of the Conditions"

### **Clause 6.2**

After the wording "by reason of the carrying out of the Works" insert "or of any other obligation pursuant to Section 2 or Section 3 of the Conditions"

### **New Clause 6.3A**

#### **"Contractor to prevent nuisance and indemnify Employer**

The Contractor shall prevent any unlawful nuisance (including any unlawful noisy working operations) or other unlawful interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.3A."

### **New Clause 6.3B**

#### **"Contractor to prevent trespass to neighbours**

Without prejudice to clauses 6.1, 6.2 and 6.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Works or any obligation pursuant to clause 2.35 would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement shall be subject to the Employer's approval before its completion, such approval not to be unreasonably withheld or delayed. The Contractor shall comply with any conditions contained in that agreement, at no cost to the Employer and shall not be entitled to any extension of time as a result of any condition contained in that agreement."

### **Clause 6.4.1**

After the wording "take out and maintain insurance" insert "(with the name of the Employer shown as an additional insured)"

Clause 6.4.1.2 - Insert after "out of one event" the following "with no limit to the number of events".

### **Clause 6.8**

In the definition of "Joint Names Policy" delete "the Employer and the Contractor" and replace with "the Employer, any person acquiring the Employer's interest in the whole or part of the Works and the Contractor"

After clause 6.8 insert:

'Where Option C applies, all references to Site Materials shall be deemed deleted. The Contractor shall be responsible for the insurance of all his Site Materials against all risks as referred to in Clause 6.8 of these conditions

### **Clause 6.12**

Delete clause 6.12 and replace with:

**"Obligation to insure**

The Contractor shall maintain, and shall ensure any relevant sub-contractors maintain, Professional Indemnity insurance with limits of indemnity of the types and amounts not less than those stated in the Contract Particulars, provided that (subject to clause 6.12A) such insurance is available at commercially reasonable rates and terms. The Contractor, and any relevant sub-contractors shall maintain that professional indemnity insurance:

- .1 with reputable insurers lawfully carrying on insurance business in the UK ;
- .2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- .3 on terms that do not require the Contractor, or relevant sub-contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930."

New Clause 6.12A

**"Commercially reasonable rates**

Any increased or additional premium required by insurers for the insurance referred to in clause 6.12 and clause 6.13C because of the Contractor's, or relevant sub-contractors claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates."

New Clause 6.12B

**"Contractor, or relevant sub-contractor may not settle, compromise or affect a claim**

In relation to the insurance referred to in clause 6.12, the Contractor, or relevant sub-contractor shall not, without the Employer's consent:

- .1 settle or compromise any claim with the insurers that relates to a claim by the Employer against the Contractor or relevant sub-contractor; or
- .2 by any act or omission loose or affect the Contractor's, or relevant sub-contractor's right to make, or proceed with, that claim against the insurers."

New Clause 6.12C

**"Evidence of insurance**

Whenever the Employer reasonably requests, the Contractor or relevant sub-contractor shall send the Employer evidence that the Contractor's insurance referred to in clause 6.12 is in force, including, if required by the Employer, an original letter from the Contractor's or relevant sub-contractor's insurers or brokers confirming:

- .1 the Contractor's or relevant sub-contractor's then current professional indemnity insurance; and
- .2 that the premiums for that insurance have been paid in full at the date of that letter."

New Clause 6.12C

**"Professional Consultants' professional indemnity insurance**

The Contractor shall procure that the professional consultants shall maintain professional indemnity insurance in accordance with the required form of Professional Consultant's deed of collateral warranty or schedule of third party rights. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Professional Consultant), the Contractor shall procure and shall send to the Employer evidence that the Professional Consultant's insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each Professional Consultant's insurers or brokers confirming:

- .1 the Professional Consultant's then current insurance, as referred to in this clause; and



.2 that the premiums for that insurance have been paid in full at the date of that letter."

#### Additional clause 6.18

The Contractor shall ensure so far as is reasonably practicable the health, safety and welfare at work of his employees and shall conduct his undertakings in such a way as to ensure that persons other than his employees who may be affected by his operations are not exposed to risks to their health or safety and shall in all respects perform all his duties under the Health and Safety at Work etc. Act 1974 and all Health and Safety Regulations made thereunder.

### **SECTION 7: ASSIGNMENT, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES**

#### Clause 7.1

After Clause 7.1 insert the following:

"Where the Contractor wishes to assign this Contract or any part thereof to another company, the company to which the Contractor wishes to assign the Contract must be approved by the Employer

At the end of Clause 7E insert the following:

The Contractor will provide executed Collateral Warranties within 28 days request from the Employer. This clause shall survive termination/expiry of the Contract.

### **SECTION 8: TERMINATION**

Amend Clause 8.4.1.4 as follows: "fails to comply with clauses 3.3, 7.1 or 6.18 (Health & Safety)".

#### Clause 8.4.1.3

After the wording "requiring him to remove" insert the wording "or rectify"

#### Clause 8.5.3.3

At the start of the sub-clause, after the wording "the Employer may" insert ", at the Contractor's expense"

Amend Clause 8.6 as follows:

In clause 8.6, after "acting or his behalf", insert:

"or associated with him",

and, at the end of the clause, after the full stop, insert:

"For the purpose of this clause 8.6, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Contractor includes, but is not limited to, any sub-contractor of the Contractor."

#### Clause 8.7.2

After the wording "the Contractor shall" insert ", at the Contractor's expense"

#### Clause 8.7.4

At the end of the clause before the colon insert ", at the Contractor's expense"

### **SECTION 9: SETTLEMENT OF DISPUTES**

#### New sub-clause 9.2.3

The Adjudicator shall give reasons for his decision and shall deliver his decision to the Parties as soon as practicable and within 2 Business Days of making his decision.

New sub-clause 9.2.4

The Adjudicator shall notify the Contractor and the Employer as soon as practicable, if he becomes aware that he has any interest in the Works, the subject matter of the adjudication, or the Parties

Insert new Section 10

## **SECTION 10:            ADDITIONAL EMPLOYERS REQUIREMENTS**

- 10.1.1 The Contractor shall operate policies and processes which have due regard to the need to:
  - 10.1.1.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - 10.1.1.2 advance equality of opportunity between persons who share a protected characteristic (as defined under the Equality Act 2010) and persons who do not share it; and
  - 10.1.1.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.1.2 Pursuant to Condition 10.1.1, the Contractor shall also observe as far as possible the Equality Act, Codes of Practice produced by the Equality and Human Rights Commission, which accompany the Equality Act 2010
- 10.1.3 The Contractor shall set out its equal opportunities policy:
  - 10.1.3.1 in instructions to those concerned with recruitment, training and promotion;
  - 10.1.3.2 in documents available to its personnel, recognised trade unions or other representative groups of its personnel;
  - 10.1.3.3 in advertisements and other literature
- 10.1.4 The Contractor shall, on request, provide the Employer with examples of such instructions, documents, advertisements and literature
- 10.1.5 In the event of any finding of unlawful discrimination or recommendation being made against the Contractor by any court or tribunal, or of any adverse finding or recommendation in any formal investigation, the Contractor shall take appropriate steps to address the recommendation or to prevent repetition of the unlawful discrimination and shall, on request, provide the Employer with details of any steps taken
- 10.1.6 The Contractor shall take all reasonable steps to ensure that Contractor's personnel engaged in the performance of the Contract do not act towards either the Employer's staff or members of the public in a manner that could amount to harassment on any of the grounds mentioned in Condition 10.1.1
- 10.1.7 The Contractor shall at the request of the Contract Administrator provide the Employer with a breakdown of its workforce by all or any of the protected characteristics listed in section 4 of the Equality Act 2010 and grade to the extent that the Contract Administrator may reasonably require such information for the purpose of monitoring the Contractor's compliance with clauses 10.1, 10.3, 10.4, 10.5 and 10.6 so far as may be relevant.
- 10.1.8 The Contractor shall inform the Contract Administrator immediately on becoming aware of any legal proceedings (whether civil or criminal) brought or likely to be brought against the Contractor under the Equality Act 2010 or any judgments awards, convictions, (not spent or exempted under the Rehabilitation of Offenders Act 1974) or settlements arising therefrom and shall provide the Contract Administrator with such further information and documentation as he may require in relation thereto.
- 10.1.9 The Contractor shall, as far as practicable and to the satisfaction of the Contract Administrator, provide at the Contractor's own expense all such facilities as may be necessary to enable any duly authorised disabled employee or agent of the Employer to visit the Contractor, either at the Premises or at any of the Contractor's premises, for any purpose relating to the Contract. In

meeting these obligations, the Contractor shall at all times have regard to the Disability Discrimination Act 1995 and 2005 and Codes of Practice on Employment of Disabled People.

- 10.1.10 The Contractor shall not, when employing persons for the purpose of performing the Works, discriminate on grounds of race against any person;
- .1 in the arrangements the Contractor makes for the purpose of determining who should be offered that employment; or
  - .2 by refusing or deliberately omitting to offer that person that employment; or
  - .3 in the way the Contractor affords that person access to any benefits, facilities or services or any benefits, facilities or services arising from the employee's terms and conditions of employment or by refusing or deliberately omitting to afford that person access to them; or
  - .4 by dismissing that person, or subjecting him or her to any other detriment (not being detriment involving a denial of any of the opportunities mentioned in Clause 10.1.10.3 above, nor a detriment relating to the employee's terms and conditions of employment).
- 10.1.11 The Contractor shall provide such information and access to such documents as the Employer may reasonably require to satisfy itself that the Contractor complies and shall continue to comply in all respects with this Clause 10.
- 10.1.12 The Contractor shall carry out the Works in a manner which is consistent with the Human Rights Act 1998 as though (for the avoidance of doubt) it is bound by the Act and in such a way that the Employer shall not be liable to any person for a breach of its duties under the said Act and shall indemnify the Employer against any direct or indirect costs expenses damages compensation liabilities or other claims incurred or suffered by the Employer arising from or in relation to a breach or alleged breach of the said Act.
- 10.2 The Contractor recognises that in the course of providing the Works some of its personnel may be required to work directly with or have access to children or vulnerable adults. Notwithstanding the provisions of the Rehabilitation of Offenders Act 1974, the Contractor shall undertake full identification checks for all personnel engaged in the provision of the Works prior to the commencement date and throughout the contract period and shall supply to the Employer a fully completed, verified application form for enhanced DBS clearance for each member of the Contractor's personnel engaged in the provision of the Works. Enhanced DBS clearances are to be completed and verified to the Employer's satisfaction before the personnel are engaged in the provision of the Works
- 10.3 The Contractor shall employ sufficient persons to ensure that the Works are carried out in accordance with the Contract. The Contractor's employees engaged in and about the carrying out of the Works shall be properly and sufficiently qualified, competent, skilled and experienced and the Contractor shall ensure that such persons are properly and continuously trained, sufficiently instructed and adequately supervised with regard to the carrying out the Works generally and in particular:
- The task or tasks such persons have to perform;
  - All relevant rules, procedures and statutory requirements concerning health and safety, including the Employer's health and safety policies and procedures as issued to the Contractor.
- 10.4 The Contractor shall be responsible for the activities of the Contractor's personnel, its agents and sub contractors.
- 10.5 Subject always to the provisions of the Data Protection Act 1998, notwithstanding the provisions of the Rehabilitation of Offenders Act 1974, the Contractor shall ensure that all Contractor's personnel provide information about all their convictions, including spent convictions. The Contractor shall disclose to the Employer's Agent, and shall provide sufficient authority from such personnel to disclose, sufficient information to enable the Employer's Agent to make proper investigation of all such convictions, including spent convictions
- 10.6 The Employer shall be entitled to require the Contractor to remove from the performance and carrying out of the Works any of the Contractor's employees, officers or sub-contractors whose behaviour is in the opinion of the Employer disruptive, disturbing or likely to cause offence to the Employer or its employees and where the Employer has received a valid complaint.

- 10.7 The Employer shall in no circumstances be liable either to the Contractor or to any employee or sub-contractor removed pursuant to this clause in respect of any cost, expense, liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Employer in respect of any claim or proceedings made or brought against the Employer by such Contractor's employee or sub-contractor
- 10.8 The Contractor shall co-operate fully with any enquiry or investigation made by the Employer's internal or external auditors, or any other quality or performance inspectors, that in any way concerns this Contract or any sums claimed or charged in relation to this Contract. The Employer may use information given by the Contractor in connection with this Contract to prevent and detect fraud and money-laundering; it may also share this information, for the same purpose, with other organizations that handle public funds. The Contractor shall take all necessary action to prevent money laundering. Where the Employer deems that the Contractor has been involved in money laundering it will take whatever measures appropriate to prevent this and report such action to the relevant authorities. The discovery of fraud and/or money laundering shall be grounds for termination of the Contractor's employment
- 10.9 The Contractor shall comply with any Employer policies affecting the Contract and shall if requested provide the Employer with any relevant information required in connection with any legal inquiry, arbitration or court proceedings in which the Employer may become involved or any relevant disciplinary hearing internal to the Employer and shall give evidence in such inquiries or proceedings or hearings arising out of the Contract. The Contractor shall co-operate fully with the Commissioner for Local Administration in England (the Local Government Ombudsman) in any investigation by him of any complaint relating to the Contract and in enquiries by any of the Employer's Committees.
- 10.10 The Contractor shall, upon becoming aware of anything in connection with the Contract that is likely to give rise to legal inquiry or litigation, forthwith notify the Authorised Officer, giving such details as are available
- 10.11 The Contractor shall comply with all statutory requirements to be observed and performed in connection with the Contract and shall indemnify the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this Condition
- 10.12 The Contractor shall co-operate fully with any enquiry or investigation (whether routine or specific) made by the Employer's internal or external auditors or any other quality or performance inspectors that in any way concerns, affects or relates to the Contract or any sums claimed or charged in relation to this Contract.
- 10.12.1 Such co-operation shall include (but is not limited to) the following:
    - 10.12.1.1 providing access to or copies of such files, documents, letters, notes, minutes, records, accounts or any other information (held in any media) that relate to the subject or service under investigation;
    - 10.12.1.2 providing access to the premises, vehicles, plant, equipment (including ICT hardware and software) or other assets used by the Contractor in the provision of the Services;
    - 10.12.1.3 providing access to the Contractor's personnel involved in the provision of the Works (including management and supervision) or who may be the subject of or be named in any enquiry or investigation by the auditors or inspectors, including providing suitable facilities for interviewing such staff;
    - 10.12.1.4 maintaining the confidentiality of the enquiry or investigation when requested to do so by the auditors or inspectors
    - 10.12.1.5 The Contractor shall ensure that the terms of any sub-contract contain identical provisions to this Condition

- 10.12.1.6 If the results of such enquiry, investigation or inspection identify any loss incurred by the Employer in consequence of any breach of contract by the Contractor or any sub-contractor, the Employer shall be entitled to deduct from any sums that would otherwise be payable by it to the Contractor both the value of such loss and the costs to the Employer of the enquiry, investigation or inspection. If the Employer does not hold any such sums from which deductions may be made, the Employer may recover the value of the loss and the costs of the enquiry, investigation or inspection from the Contractor as a debt
- 10.13 The Contractor shall deal with any complaints about its performance of the Contract, received from whatever source, in a prompt, courteous and efficient manner. The Contractor shall set up an internal process for dealing with complaints and shall keep a written record of all complaints received and of the action taken in relation to such complaints. The Contractor shall inform the Employer's Agent in writing of all complaints received and of all steps taken, and shall permit its record of complaints to be inspected by the Employer's Agent (or any other person nominated by him) at all reasonable times on reasonable notice
- 10.14 The Contractor shall not speak to the press or broadcasting media about any matters connected with the Contract except with the prior written consent of the Employer's Agent. If the Contractor intends to advertise its provision of the Works to the Employer, it shall obtain approval of the Employer's Agent before doing so as to the content of such advertisement.
- 10.15.1 Immediately the Contract commences, the Contractor shall provide a copy of its "business continuity policy" to the Employer. On request, the Contractor shall also provide a copy of the "business continuity plan". The business continuity plan shall contain all practical measures considered necessary and sufficient by the Contractor to enable the Contractor to continue to be able to perform its obligations under the Contract in the event of an emergency or disaster, whether such event takes place in the London Borough of Ealing or at the Contractor's business premises elsewhere. The business continuity plan shall also set out the detailed procedures and processes to be followed and actions to be taken in the event of a failure or disruption of the Works. All Business Continuity documentation shall have due regard to the standards outlined in the British Standard BS25999 or European or international equivalent
- 10.15.2 The Contractor shall test its business continuity plan on a regular basis and in any event not less than once in every twelve (12) month period
- 10.15.3 The Employer may require the Contractor to conduct additional tests of the business continuity plan where the Employer reasonably considers it to be necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the business continuity plan
- 10.15.4 The Employer reserves the right to attend any business continuity plan test undertaken by the Contractor, or request that the Contractor attend tests facilitated by the Employer. The Contractor shall attend any debrief if requested to do so by the Employer
- 10.15.5 The Contractor shall undertake regular risk assessments and/or business impact analysis in relation to the provision of the Services not less than once every six months and on request shall provide the results and any recommendations in relation to those risk assessments or business impact analysis to the Employer in writing within fourteen (14) Working Days of the date of the request
- 10.15.6 For the avoidance of doubt, no additional payment shall be due to the Contractor in connection with the provisions of this Contractor's Business Continuity Provisions clause
- 10.16 The Employer has introduced a whistle blowing policy the full text of which is contained in the Employer's Constitution and is available on the Employer's Internet Site. In practical terms, whistle blowing occurs when a concern is raised about danger or illegality that affects others, e.g. Clients, members of the public or the Employer itself. The Contractor shall ensure that the Contractor's personnel and sub contractors are made aware of this policy and advised that they should comply with it. As the person blowing the whistle they would not usually be directly

affected by the danger or illegality. Consequently they would rarely have a personal interest in the outcome of any investigation into their concerns. This is different from a complaint or grievance. Blowing the Whistle on Malpractice covers a wide range of concerns. The types of activity that should be disclosed include but are not limited to the following:-

- fraud or corruption
- financial maladministration
- unauthorised use of public funds
- the physical, emotional or sexual abuse of clients
- failure to comply with legal obligations
- endangering of an individual's health and safety
- damage to the environment
- a criminal offence
- failure to follow financial and contract procedure rules
- showing undue favour to a contractor or a job applicant
- miscarriages of justice
- deliberate concealment of information relating to any of the above

Members of staff should raise their concerns with their manager as soon as they suspect malpractice or the Employer if the malpractice is on the part of the Contractor. The earlier the concern is raised the easier it will be to take action. The whistleblower is a witness to events, not a complainant and so there is no need to wait for proof of malpractice before raising concerns.

- 10.17 The Contractor shall be deemed to have allowed in his tender for complying with all incidental costs and expenses arising from all the requirements of the Value Added Tax Act 1994 in respect of Value Added Tax, and any Orders or Regulations made under that Act or subsequent amendments to the Act. The Contractor shall particularly note the following:

With regard to Contract Clause 4.4.1 (VAT) - the Contractor must state in their Interim Applications the following :-

- the written notice indicating the rate of tax chargeable on the Works for all certificates.
- a breakdown of the gross valuation into (i) items that are zero rated (ii) items that are rated at any other rate and
- a provisional assessment for interim valuations and a firm assessment for the final valuation of the Value Added Tax due on works included in the certificate.

The Employer is entitled to claim from the Commissioners any tax paid or payable under the Supplemental Provisions.

The Employer will issue an Authenticated Receipt Form with the Certificate of Payment upon which a VAT payment is due and immediately on receipt of the VAT payment the Contractor is to sign and return the Authenticated Receipt to the Employer. The Contractor will be required to comply with this procedure even if he normally operates some other form of authenticated receipt or invoice system.

Any invoices issued by the Contractor to the Employer will, for the avoidance of all doubt, be a valid VAT invoice

#### 10.18 Nuisance / Quiet Enjoyment of the Site

The Contractor shall at all times prevent any nuisance (including, but without limitation, any noisy work operations) or the unreasonable interference with the rights of any tenant, lawful visitor or occupier or any statutory undertaking arising out of the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto.

The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default of the Contractor in performing his obligations under this clause 10.18

#### 10.19 Safety and Security

- 10.19.1 The Contractor shall be solely responsible for keeping the site safe for lawful visitors to the site. The Contractor shall:
- (i) ensure that those parts of the site and the Works that are under his control are maintained to a standard that avoids danger to lawful visitors to the site;
  - (ii) ensure that the site and the Works are kept secure at all times;
  - (iii) procure and maintain at his own cost all necessary measures required by law or by any relevant authority or by the Employer or otherwise to protect the Works and ensure the safety of the general public; and
  - (iv) ensure that sub-contractors employ on the Works only persons who are suitably qualified with regard to health, safety and security.
- 10.19.2 The Employer may require the Contractor to comply with and give effect to a policy on admission of persons to the site.
- 10.19.3 Subject to any express provisions of this Contract to the contrary or the Employers written consent, the Contractor's employees and agents are only permitted to enter those parts of the site under the Contractor's control.
- 10.19.4 The Contractor shall ensure that:
- (i) access to the site is not inhibited in any way;
  - (ii) any vehicles or persons authorised by the Employer to use parts of the site for access to other premises are not impeded in any way; and
  - (iii) it and its employees, agents and domestic sub-contractors liaise with and do not impede any workmen employed by the Employer to carry out works on or near the site.
- 10.19.5 The Contractor shall indemnify the Employer from and against any cost, loss, liability, claim or damage (including all legal fees and expenses) which the Employer incurs or suffers as a consequence of any breach by the Contractor of its obligation under this Clause 10.19.

## 10.20 Construction Products Regulations

The Contractor shall ensure that all materials used for completion of the Works will conform to the requirements of the Construction Products Regulations and have the relevant certificates and documents from the manufacturer as required under the Construction Products Regulations

## 10.21 Set Off

- 10.21.1 The Employer may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Contract or any other contract pursuant to which the Contractor or any associated company of the Contractor provides goods, services or works to the Employer.
- 10.21.2 If the Employer wishes to set off any amount owed by the Contractor against any amount due to the Contractor pursuant to clause 10.21.1 it shall issue a Pay Less Notice in accordance with clause 4.10 setting out the Employers reasons for withholding or retaining the relevant sums.
- 10.21.3 The Contractor shall make any payments due to the Employer without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Employer to the Contractor.

## 10.22 Work Related Road Risks

### **Fleet Operator Recognition Scheme (FORS) Accreditation**

- 10.22.1 Where the Contractor operates Delivery and Servicing Vehicles, it shall within 90 days of the contract date:
- i) (unless already registered) register for FORS or a scheme, which in the

reasonable opinion of the Employer, is an acceptable substitute to FORS (the "Alternative Scheme"); and (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme

- ii) The Contractor shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme

Alternatively, where the Contractor has attained Silver Accreditation or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard

### **Safety Equipment on Vehicles**

10.22.2 The Contractor shall ensure that any Large Vehicle, which it uses to complete the Works, shall:

- i) Have Side guards fitted, unless the Contractor can demonstrate to the reasonable satisfaction of the Employer that the vehicle will not perform the function for which it was built if Side guards are fitted;
- ii) Have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- iii) Have equipment fitted with an audible means of warning other road users of the vehicle's left manoeuvre;
- iv) Bear prominent signage on the rear of the vehicle to warn VRUs of the dangers of passing the vehicle on the inside and of getting too close to the vehicle

### **Driver Licence Checks**

10.22.3 The Contractor shall ensure:

- i) It has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- ii) That each of its Drivers has a driving licence check with the DVLA or equivalent before that Driver commences delivery of the Works and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Contractor's risk scale, provided that the Contractor's risk scale has been approved in writing by the Employer within the last 12 months:
  - a) 0 – 3 points on the driving licence – annual checks;
  - b) 4 – 8 points on the driving licence – six monthly checks;
  - c) 9-11 points on the driving licence – quarterly checks; or
  - d) 12 or more points on the driving licence – monthly checks

### **Driver Training**

10.22.4 The Contractor shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, eLearning, practical and on the job training) and continued professional development to include training covering the safety of Vulnerable Road Users and on-cycle hazard awareness, throughout the term of the Agreement.



## **Collision Reporting**

10.22.5 The Contractor shall:

- i) Ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports. For example, the CLOCS Manager [www.clocs-manager.org.uk](http://www.clocs-manager.org.uk)
- ii) Notify the Employer of any collisions involving injuries to persons or fatalities within five Business Days of an incident occurring and provide to the Employer an updated Collision Report within five Business Days of a written request.

## **Traffic Routing**

10.22.6 The Contractor shall ensure that any vehicle routes to sites or premises specified by the Employer are adhered to unless directed otherwise (referred to in paragraph 10.22.7(v) below). If applicable, these should be the routes as defined in the site's construction management plan. Wherever possible, these routes should be from the Transport for London Road Network.

## **Requirements for Contractors with Site Management Responsibility**

10.22.7 The Contractor shall ensure that the transport impacts of the construction site are effectively managed and shall ensure:

- i) That other options to plan and control vehicles to reduce peak hour deliveries are considered, to reduce the risk.
- ii) That the condition of the site is suitable for vehicles fitted with safety features and Side guards.
- iii) That access to and egress from the site is appropriately managed, clearly marked, understood and clear of obstacles and that traffic management principles are adhered to.
- iv) That vehicles are loaded and unloaded on-site as far as is practicable.
- v) That a suitable, risk assessed vehicle route to the site is specified and that the route is communicated to all contractors and drivers. Any deviations to this route will be clearly specified and communicated.
- vi) Where a construction management plan is required by the Local Planning Authority, to submit such a plan for approval by the Local Planning Authority before commencing any works, and once any construction management plan has been approved in relation to the development to thereafter fully comply with the same

## **Subcontracts**

10.22.8 These terms shall also apply to the Contractor's subcontractors and the Contractor shall ensure that any relevant subcontracts awarded by them include terms requiring subcontractors to comply with these obligations. The Contractor shall provide documentary evidence of the inclusion of such terms in their subcontracts if requested to do so by the Employer

The Contractor shall develop and implement a compliance monitoring and enforcement procedure for subcontractors, to ensure the CLOCS Standard is adhered to.

## **CLOCS Associate**

10.22.9 The Contractor shall register to be a CLOCS Associate to receive updates on the standard and details of further opportunities to become involved with the CLOCS Standard, as detailed at: [www.clocs.org.uk/express-and-interest/](http://www.clocs.org.uk/express-and-interest/)

## **Monitoring and Failure to Comply with WRRR requirements**

10.22.10 The Contractor will self-certify its compliance at the start of the Agreement and provide annual updates on its compliance, as well as notifying the Employer if its compliance changes at any stage.

Spot checks will be undertaken at random times at the Employer's properties and at the Contractor's vehicle operators' sites or depots.

A copy of the Enforcement Procedure is attached in Schedule 11. The Contractor should note that the Employer has the option to terminate this Agreement in the event of non-compliance with clauses 10.22.1 to 10.22.9 above. Following ongoing review and development of the CLOCS trial, the Employer reserves the right to amend this Enforcement Procedure in the future. A copy of any amended Enforcement Procedure will be issued to the Contractor.

If the Contractor fails to comply with clauses 10.22.1-10.22.9 above:

- i) The Contractor shall be in material breach of this Agreement and subject to the Enforcement Procedure attached in Schedule 11; and
- ii) The Employer may refuse the Contractor, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Employer for any purpose (including but not limited to deliveries).

## Definitions

*Bronze Accreditation* means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.forsonline.org.uk](http://www.forsonline.org.uk).

*Car-derived Van* means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment.

*Collision Report* means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities and within 5 Business Days of a collision occurring.

*CLOCS* means the construction logistics and cycle safety

*CLOCS Standard* means the construction logistics and cycle safety standard for managing work related road risk in the construction logistics sector. The Employer is a CLOCS Champion. The standard and supporting guidance can be found at: [www.clocs.org.uk](http://www.clocs.org.uk).

*CLOCS Associate* means an organisation which expresses an interest in receiving information and updates about the CLOCS standard and may be given the opportunity to participate CLOCS meetings or further development of the standard. A CLOCS Associate organisation should be positive in their messaging of CLOCS.

*CLOCS Manager* means the best practice work related road safety reporting system that enables fleet operators to capture, investigate and analyse incidents, collisions and near-misses, as detailed at [www.clocs-manager.org.uk](http://www.clocs-manager.org.uk).

*Construction Management Plan* means the Employer planning requirement secured under a Section 106 agreement, for certain construction developments to mitigate the cumulative impacts of construction in the vicinity of the site, including transportation and traffic management impacts, but also other environmental impacts such as noise, dust and vibrations.

*Delivery and Servicing Vehicle* means a Large Vehicle, a Van or Car-derived Van. This excludes cars, motorcycles and grey fleet vehicles (vehicles used for business travel but hired or owned by the individual rather than the Contractor).

*Driver* means any employee of the Contractor (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Contractor while delivering the Services.

*DVLA* means the Driver and Vehicle Licensing Agency.

*eLearning* means an online driver training course offered via FORS which can be found at: [http://www.fors-online.org.uk/index.php?page=AE\\_INTRO&return=PTE\\_INTRO](http://www.fors-online.org.uk/index.php?page=AE_INTRO&return=PTE_INTRO).

*Enforcement Procedure* means the procedure detailed in Schedule 1

*FORS* means the Fleet Operator Recognition Scheme, which is an accredited scheme for businesses operating Delivery and Servicing Vehicle fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance.

*FORS Standard* means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: [www.fors-online.org.uk](http://www.fors-online.org.uk).

*Gold Accreditation* means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk).

*Large Vehicle* means a vehicle with a MAM exceeding 3,500 kilograms.

*Local Planning Authority* means the local authority responsible for town planning functions for a particular area

*MAM* means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road. This is also known as the gross vehicle weight (GVW).

*Side guards* means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986.

*Silver Accreditation* means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk).

*TfL* means Transport for London

*Transport for London Road Network* means London roads that are maintained, managed and operated by TfL. These are also known as 'red routes' and are separate to roads managed by the 32 London boroughs within their borough boundaries.

*Van* means a vehicle with a MAM not exceeding 3,500 kilograms.

*Vulnerable Road Users/VRUs* means a pedestrian, cyclist, motorcyclist or person of reduced mobility.

*WRRR* means work related road risk

## **EXECUTION**

The Contract: Will be executed as a Deed.

**MAIN CONTRACTOR'S WARRANTY AGREEMENT:** The Contractor will be required to enter into a Warranty Agreement for the Works, such Warranty to be between the Contractor and Employer. A copy of the proposed Warranty is included in the Appendices.

**DESIGNING SUB-CONTRACTOR'S FORM OF WARRANTY AGREEMENT:** The Contractor's attention is drawn to the fact that there is a requirement for a Form of Warranty Agreement to be provided to the Employer by designing sub-contractors.

Copies of the format of the warranties to be provided are included in the Appendices.